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Narrative Review Article

Ethical and Environmental Obligations in Oil and Gas Contracts (Comparison of the Legal Systems of Iran and Iraq)

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Abstract

Introduction: Determining the legal framework and contractual format of oil and gas contracts determines the principles and regulations governing the contract. Given that the oil and gas sector is one of the most important sectors in terms of environmental pollution (sea, land and air) and endangering animal and plant life, which consequently poses a serious challenge to human society, it is necessary to consider ethical and environmental obligations in oil and gas contracts. Therefore, the present study was formed with the aim of ethical and environmental obligations in oil and gas contracts in the legal systems of Iran and Iraq.

Material and Methods: The research was a review method. In order to achieve the goal of the research, information gathered from scientific journal and books for investigating ethical and environmental obligations in oil and gas contracts.

Conclusion: Oil operations such as exploration, development, exploitation, transportation and refining of oil have destructive effects on the environment, which can be controlled and reduced with measures. In this context, governments try to reduce the negative consequences of oil operations on the environment by enacting laws and regulations and including obligations for contractors in oil and gas contracts. Since environmental issues deal with the territories of the sea, land and air, this issue should be given serious attention in oil and gas contracts. In the legal systems of Iran and Iraq, it is foreseen that in upstream oil and gas contracts concluded between the employer and the contractor, ethical and environmental rules and obligations are applied by the employer, and compliance with them will also be mandatory by the contractors.

Keywords: *Ethical and environmental obligations, Contract, Obligations of the parties, Oil and gas contract*

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INTRODUCTION

Oil and gas are considered one of the most important energy sources at present. These resources are located in oil reservoirs and in underground layers. It is not possible to achieve them except by identifying oil fields and extracting oil from them. Because no industry like oil has been able to affect human civilization with such depth and speed. The oil industry has features that are unparalleled in human history. Since Iran is one of the largest holders of oil and gas resources in the world and, considering that it is located between the two largest energy sources in the world, namely the Caspian Sea in the north and the Persian Gulf in the south, it has a special position at the international level.

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To preserve and protect these God-given resources, the first and most important part is to conclude a legal contract. Using legal knowledge manages many risks in the oil and gas industry. Iran, as one of the largest holders of oil and gas in the world, needs optimal legal contracts to make maximum use of its oil and gas resources. In oil and gas contracts, conditions must be considered to protect the interests of the country with resources. At the same time, the project optimally achieves the determined results and goals.

Legal conditions govern the method of project assignment, contract conclusion, contract duration, etc., and the accuracy of the practice in formulating these conditions plays a strategic role in the success or failure of the project in securing the interests of the country. One of the basic legal conditions that must be considered in oil and gas contracts is related to the contractor's ethical and environmental obligations. The importance of this issue is because the oil and gas sector is one of the most important sectors in terms of environmental pollution (sea, land, and air) and endangering animal and plant life, which consequently also faces human society with a serious challenge. Therefore, the present study was formed with the aim of ethical and environmental obligations in oil and gas contracts in the legal systems of Iran and Iraq.

MATERIAL AND METHODS

The research was a review method. In order to achieve the goal of the research, information was gathered from scientific journals and books for investigating ethical and environmental obligations in oil and gas contracts.

DISCUSSION

Ethical obligations in contracts

Most philosophers consider moral obligations similar to criminal law and religion, because morality, like criminal and religious concepts, requires individuals to do good and avoid evil, and punishment is also a factor in strengthening the binding power of those rules.

The world of law cannot imagine itself as an alien to morality. In some cases, issues are raised that essentially express moral rules, and the need to keep a promise, commit to not harming others, and return a trust are among these cases (1). In fact, although law pursues a goal and mission of regulating social relations, it cannot resist unwritten principles among the public in formulating and regulating laws and regulations. It is necessary for the legislator to have a comprehensive view of all issues surrounding society. Public opinion and the public conscience of society are themselves primary sources in the establishment of laws, and law must take them into account. Of course, it is worth noting that morality and law do not merge, both are necessary and indispensable to each other, and morality, with its guidelines and principles, guides law. Also, the obligation that we face in moral concepts causes individuals in society to consider themselves committed and committed not only to morality but also to legal concepts (2). The nature of moral obligations from a legal perspective varies among different legal systems. Obligations may be created by a contract between the parties, or obligations may be imposed on individuals through law (3). It should be noted that there are also obligations that the social ethics and culture of a society impose on its subordinates. The guarantee of their implementation is purely moral, and it is obvious that failure to fulfill these obligations returns to the conscience of individuals and is devoid of any judicial and legal prosecution. Therefore, morality and dignity prevail in contractual relations as well as in other aspects of human life and manifest themselves in various forms.

The Importance of Ethical and Environmental Obligations in Oil and Gas Contracts

Oil and gas companies operate within a complex set of social norms alongside legal obligations. In addition to having many obligations, oil companies have legal and ethical obligations to protect the natural environment of the country in which they operate. Each country has its own laws regulating aspects of oil company operations so that they do not destroy the natural environment of their operating area. Compliance with these requirements is mutually beneficial for both the host country and the company, as the host country can improve its reputation by taking steps to preserve the natural environment of the host country. However, inadequate environmental laws and the lack of enforcement of the applicable laws have encouraged oil companies to not take the necessary measures to both protect and provide solutions to any environmental degradation.

But there are a few basic ethical principles that have been addressed in contract law and have become legal principles, enabling oil and gas employers (governments) to have greater oversight over contractors' performance and prevent environmental damage by them.

- Principle of Social Responsibility: The concept of corporate social responsibility is a commitment to consider not only the interests of the company's shareholders, but also the interests of all stakeholders affected by project activities. Since the 1950s, many terms have been used to describe the ethical obligations of a company, such as corporate social responsibility, corporate social accountability, corporate social performance, corporate philanthropy, and corporate citizenship. Socially responsible business decisions can be justified by a long and complex process of reasoning, as they have a good chance of bringing long-term economic benefits to the company, thereby repaying it for its socially responsible perspective. Ethical rules and standards that are considered morally binding. Therefore, attention to social responsibility in oil and gas contractors creates obligations in the field of environmental ethics that are partly supported by legal rules.
- Principle of Disclosure: This principle requires oil and gas contractors and governments to report disasters, pollution, and hazards. This is a fundamental ethical principle according to which contractors and governments as employers are obliged to cooperate with other countries in order to protect the environment in all circumstances. In this regard, they should inform other countries before environmental incidents occur and assist countries at risk with the aim of preventing the spread of damage and reducing the destructive effects of such incidents. It should be noted that the principle of information is explicitly stated in Article 198 of the 1982 Convention on the Law of the Sea (4).
- Principle of Obedience to Covenants: According to this fundamental principle of treaty law, it is essential to comply with obligations arising from international conventions. International environmental obligations also follow this principle. Article 26 of the 1980 Vienna Convention emphasizes the need for parties to the treaty to adhere to it and implement it in good faith. This principle is also one of the initiatives of the Rio Declaration (1992), which states that "In order to protect the environment, countries should use preventive and protective criteria and standards based on their capabilities, and where there is a possibility of serious danger, the shortcomings should be fully investigated and should not be ignored because the fight against environmental pollution is expensive."
- The principle of prevention: Prevention obligations are important in oil and gas contracts because it is often difficult to

compensate for environmental damage after the damage has occurred. Employers should therefore take steps to reduce the potential for environmental damage from oil and gas. According to Article 206 of the Law of the Sea Convention, "Whenever States, as employers, have reasonable grounds to believe that activities under their control are likely to cause pollution of the environment, they shall, to the extent practicable, assess the potential effects of those activities and report to the Parties." In this way, the long-term effects of such destructive activities can be reduced (5).

- The principle of protection and conservation: The principle of protection and conservation is very old and cross-sectoral. This commitment does not only refer to the commitment of the government, but it is also a public and private commitment, and individuals and even the international community have a commitment. In Iran, Article 50 of the Constitution and the most famous principle in environmental protection in this regard state: "The Islamic Republic considers the protection of the environment, in which the present generation and future generations can have a growing social life, to be a public duty. Therefore, economic and other activities that are associated with environmental pollution or its irreparable destruction are prohibited." Regarding international regulations to which Iraq is also committed, we can also refer to Article 192 of the Convention on the Rights of States, the Convention on Biological Diversity of 1992, and the Global Conservation Strategy of 1980 (6).
- Precautionary Principle: The precautionary principle is identified in Article 15 of the Rio Declaration. There are some activities for which there is scientific uncertainty, so greater caution should be exercised, especially where there is insufficient information about the environmental impacts. However, governments can only do something if they can prove that their activities will not lead to environmental degradation. Although it may seem that countries cannot be forced, in some cases international organizations such as the World Bank pay special attention to this principle when granting loans and refuse to cooperate with them if the plans or projects of the applicant country pose a threat to the environment (5).
- The principle of good neighborliness: This ethical rule is stated in the 2nd Rio. Based on this ethical principle of neighborliness, observance of the principle of good neighborliness can help realize the ideas pursued in each country. When our relations with neighboring countries and countries with which we have many things in common move from neighborhood to unity, synergy arises that helps the authority of a country. In oil and gas contracts, the principle of neighborliness can be greatly benefited, such as cooperation in collecting oil spills on the sea surface.

Oil and Gas Law in Iran and Iraq

Concluding oil and gas contracts is a completely technical matter that has a lot to do with the political, legal and economic system of each oil-producing country. It is clear that in our country, despite its abundant oil reserves, determining a contractual model that is in line with the needs of the country and the constitution while at the same time creating economic interaction with modern countries seems to be a necessity. Without a doubt, by explaining the general terms of contracts and making them transparent, foreign investors and companies can make decisions faster in the field of cooperation with important oil projects and reduce the stages of contract negotiations, which in practice take a long time, to the shortest possible time, and

overall, provide a more appropriate legal framework in this important economic area.

More than a hundred years have passed since oil cultivation in Iran, and it has been about seventy years since oil contracts (including concessions, partnerships, services, etc.) have been concluded and implemented between the government and foreign companies. Initially, and since the conclusion of concession contracts, the supervision of the host country's domestic institutions was not only low on the conclusion of contracts, but also on the implementation of these types of contracts. As time passed and the Third World countries became more aware, the supervision of the host country's government and public institutions on the conclusion and implementation of oil contracts increased. In oil contracts, by citing principles such as the principle of public power, the principle of public services, and the principle of public interest, the government has to some extent disrupted the rules of private law and defined and encouraged a specific legal framework for itself under preferential, protective, and authoritative rights. The existence of private law elements as conditions for the validity of the contract or general conditions of the contract, which are specific to all contracts, does not lead to their superiority over the principles of public law; it is even seen that in the event of a conflict between the rules of public law and the rules of private law in oil contracts, the principles of public law prevail (7).

Iran's new oil contracts have been the newest type of oil contracts since the Darcy contract. These types of contracts, which are service contracts, have always been challenged and faced with serious criticism since the eleventh government proposed them. These contracts, in their most comprehensive form, unlike mutual sales, include all periods of exploration, development, and production. One of the important goals of concluding these contracts is the transfer of technology by employing Iranian forces in each operation, as well as training human resources, which the foreign party commits to. With the approval of the regulations for identifying important oil contracts in October 2017 by the government board, part of it obliged the Ministry of Oil to comply with Article 77 of the Constitution in the event of concluding or signing a treaty with foreign governments.

Among the innovations of the new oil contracts, we can mention the methods of payment of fees, wages in a new service method, reimbursement of costs to the contractor up to fifty percent of the field's revenues, and the expansion of the scope of safety, health, environmental, and social regulations. In the oil industry, various contracts are concluded for various activities, such as exploration and extraction of oil and gas in upstream operations, construction of refineries, pipelines, petrochemical plants, tanks, and oil terminals in downstream operations, or oil and gas purchase and sale contracts in commercial operations, each of which has different approval processes (8).

In Iraqi law, the Iraqi legislature has considered solutions for the close supervision of oil and gas issues. In Article "1" of the Iraqi Oil and Gas Law, the legislature has given definitions and stated that the Iraqi Ministry of Oil is the main responsible for all duties and authorities regarding the oil and gas resources of the country of Iraq. In the supervisory and inspection hierarchy, Iraqi law has provided for a board called the Board of Trustees, which is under the supervision of the Ministry of Oil and operates in various oil regions (the different regions in the Iraqi Oil Law refer to the different sectors and areas that have been formed based on the Iraqi Constitution), and finally the Oil and Gas Council, which has its own duties and powers according to the law.

According to Article 5 of the Iraqi Oil Law, the Oil Council consists of the following members:

- Chairman of the Council
- Deputy Chairman of the Council
- Minister of Economy
- Minister of Planning, Cooperation and Development, Minister of Oil
- Three experts in the oil and gas sectors, economy.

According to the aforementioned law, the Oil Council is obliged to approve international oil contracts and is responsible for legislative matters in this field. Therefore, it can be said that this council is directly involved in control, supervision and inspection and is allowed to deal with issues that are contrary to the goals and general policies of Iraq's interests by not approving contracts.

According to Article 11, the duties of the Ministry of Oil are as follows: Supervision and inspection of oil operations that are based on the law and regulations of the contract and international governing principles; explanation and preparation of samples of oil instructions and regulations; and proposing a plan and law. Accordingly, the Ministry of Oil has a key and fundamental role in supervising and controlling oil contracts and how to implement and enforce them.

For the conclusion of oil contracts in Iraq, the legal process is such that companies applying to carry out oil operations in the field in question participate in a competitive process in a tender held by the National Oil Company. According to the second paragraph of Article 9 of the Iraqi Oil and Gas Law, one of the duties and powers of the Oil Council is to approve the qualifications of companies in tenders. According to this paragraph, the said council must approve the arrangements made regarding the standards used in the negotiations. After going through all these steps and concluding a contract by the winner of the tender with the National Oil Company, according to the third paragraph of Article 9 of the Oil and Gas Law, the Federal Council must approve the concluded contracts and amend them if necessary (9). Some other duties of the Iraqi Ministry of Oil, according to Article 11, are as follows:

- Formulating and compiling oil policies and related laws and programs, as well as preparing the necessary regulations to implement these policies and laws in Iraq.
- Developing a comprehensive exploration program throughout Iraq in cooperation with the provinces.
- Monitoring the implementation of oil activities at the level of contracts and related legislation, in cooperation with the provinces to ensure the uniform implementation of oil policies throughout the country.
- Developing a successful plan for the development of explored but undeveloped fields and its approval by the Oil Council.
- Preparing the Iraqi contract model.

Supervision of oil operations is the responsibility of the Iraqi Ministry of Oil. The Iraqi Ministry of Oil is responsible for supervising the implementation of oil operations. Supervision of contracts is one of the rights of host countries in oil contracts, because ensuring the proper implementation of contracts depends on these supervisions. Oil contracts are of particular importance due to the high volume of investment and their connection with macro-political and economic issues. This has led governments to control and supervise the assignment from the very beginning until its implementation through legislation and the regulation of approved oil contracts. In an oil contract, when the contract is drawn up and then at specified intervals, the parties to the contract establish methods to facilitate and implement the contract and monitor the correct implementation of the contract. Usually, these methods or procedures, which are referred to in the contracts as coordination procedures, are set by the contractor and, if the National Oil Company

agrees, are included in the contract. They can be changed or updated during the contract implementation period. If the National Oil Company agrees, the revised coordination procedures replace the original versions (10).

Ethical and Environmental Obligations in Oil and Gas Contracts Based on Iranian and Iraqi Law

– ***Iranian Law***

In Iranian law, environmental pollution is considered in oil and gas contracts, and if the pollution caused meets the following two conditions, it is considered a crime, and the contractor is subject to compensation:

a) Serious breach of obligation

b) The breached obligation is of fundamental importance for environmental protection

Therefore, in cases where a contractor (whether domestic or foreign) violates an obligation related to non-pollution of the environment in a reciprocal oil contract for the exploration, development, extraction and exploitation of oil and gas, and international law establishes criminal liability for the breached obligation, the contractor will certainly be held criminally liable by the National Iranian Oil Company and other relevant organizations (11)

In order to optimize environmental health and safety programs in the Iranian oil industry, provisions have been made that are also considered in oil and gas contracts. These predictions include:

a) Establishing a health, safety, and environmental management system in the main and subsidiary companies and controlling the correctness of the actions taken

b) Eliminating the areas of accidents and adverse effects on people and the environment and their possible occurrence in oil-rich areas

c) Upgrading the standard of hydrocarbon products to the level of global standards and eliminating harmful substances from products

d) Implementing policies for the optimal use of basic resources (12).

– ***Iraqi Law***

Environmental considerations should be part of corporate strategies, along with environmental principles related to the extraction of raw materials that may have a detrimental impact on the natural environment. Environmental protection obligations can apparently arise from applicable laws or agreements between the contracting parties, namely oil companies and host governments, in connection with international declarations and treaties. Accordingly, environmental issues have been carefully emphasized in oil and gas contracts in Iraq (13).

The increase in industrial activities has prompted the government to enact stricter laws to prevent pollution and the disastrous consequences of large-scale corporate activities. Similarly, in Iraq, the parliament has issued similar laws, such as the Law on the Protection and Improvement of the Environment. For example, Article 14 of the Law on the Protection and Improvement of the Environment 2009 in Iraq determines the number of harmful practices and water pollutants. Article 33 of the same law also empowers the relevant minister to "... give notice to any establishment, factory or any authority or environmental polluter to remove the contributing factor within ten days from the date of notification of the notice. In the event of failure to comply with the minister's order, the minister may suspend its activity or order a temporary closure for a maximum of thirty days, which may be extended until the violation is remedied (14).

Environmental protection obligations are emphasized in the Iraqi Production Sharing Agreement signed with international oil companies and, according to the law, during the implementation of oil operations, the contractor must take the necessary measures to ensure that

the operator, subcontractors and their agents, in accordance with standard practice in the international petroleum law of the region and any application of international petroleum law, take care to protect the environment and prevent pollution (15).

There are three problematic issues in Iraq's current environmental laws and their implementation:

1. There is a lack of enforcement of current environmental laws. Although the Iraqi parliament has enacted these laws, there are no effective mechanisms to monitor their implementation.
2. Iraq's current environmental laws overlap and require oil and gas operators to obtain multiple licenses from different ministries. This creates friction, as different government agencies pass their work onto others, thus creating inertia for oil and gas development.
3. Members of the executive bodies overseeing environmental laws are inexperienced and unqualified to hold such positions, as appointments are partisan and political.

Of course, Iraqi law provides for compensation if a contractor neglects its obligations to protect the environment and fails to act on that obligation.

Compensation can be applied to oil companies as a minimum right for victims of devastated nature and polluted environments. National and international environmental law provides a rich source of models for assessing damages, in which the injured party is usually the national or international community rather than private individuals. In fact, the claimants are not previous generations but future generations whose equitable interests in a clean and healthy environment must now be protected. Compensation is now a mechanism to prevent further theft, including health, financial and natural resource losses. Oil companies are liable for a variety of damages. For example, many residents of the Niger Delta have complained of asthma, breathing difficulties and pain, headaches, nausea and throat irritation, as well as chronic bronchitis, which could be the subject of a claim against the oil operator, as in the case of Nigeria v. Shell, where the Nigerian Oil Court held that the Nigerian Oil Court had violated the fundamental rights to a healthy environment and human dignity.

Exploration and production activities in the applicant community were a violation of the fundamental rights to a healthy environment and human dignity (17).

According to the Iraqi Oil and Gas Law, this law obliges the operator to pay reasonable compensation if, in the course of petroleum operations:

a) It infringes upon or damages the rights of the owner of any property;
b) It clearly interferes with any other lawful activity.
c) The compensation payable shall not be less than the amount of the loss suffered by the beneficiaries.

The Ministry of Natural Resources shall, taking into account the amount of payment, estimate and decide on the fair and reasonable compensation payable by the authorized person under this article, after considering the representations of the interested parties. The authorized person may have the right to arbitrate in accordance with any arbitration regulations, and the affected person shall have the right to appeal to the specialized courts of the region to challenge the decision on compensation. This compensation may be obtained in exchange for the use of land for exploration and exploration operations, provided that oil companies pay the landowner or the government in the event of failure to reach an agreement with the owner. On the other hand, despite the fact that there is no specific obligation on the part of oil companies to pay for environmental damage caused by oil

operations, the Iraqi government has allocated a budget to support environmental protection (18).

CONCLUSION

Investment contracts, including oil and gas contracts, are considered to be leading and pioneering in other investment fields, and one of the ways to encourage foreign investors to invest in the country's oil industry is to improve the conditions of oil contracts.

It is certain that the legal management of oil and gas contracts and the conclusion of optimal contracts provide benefits to our country. The new generation of Iranian oil contracts was designed to optimize reciprocal sales contracts with the aim of transferring knowledge and technology. These contracts are a model and method for the country's economic development. In order to implement oil and gas contracts, foreign companies are required to cooperate with Iranian companies. The main goal of this interaction is to transfer technology and technological knowledge.

Given that oil operations such as exploration, development, exploitation, transportation and refining of oil have destructive effects on the environment, governments are trying to reduce the negative consequences of oil operations on the environment by enacting laws and regulations and including obligations for contractors in oil and gas contracts. Since environmental issues deal with the sea, land, and air, this issue should be given serious attention in oil and gas contracts. The legal systems of Iran and Iraq provide that in upstream oil and gas contracts concluded between the employer and the contractor, ethical and environmental rules and obligations are imposed by the employer, which are also mandatory for contractors to comply with.

ETHICAL CONSIDERATIONS

Ethical issues (such as plagiarism, conscious satisfaction, misleading, making and or forging data, publishing or sending to two places, redundancy and etc.) have been fully considered by the writers.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interests.

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